



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ms. Kathleen Cannon

Valencia, CA 91355

OCT 24 2006

**RE: MUR 5849
Kathleen Cannon**

Dear Ms. Cannon:

On October 17, 2006, the Federal Election Commission found that there is reason to believe that you knowingly and willfully violated 2 U.S.C. §§ 441(b)(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

29044252762

Kathleen Cannon
MUR 5849
Page 2

Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Marianne Abely, the staff attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis
Designation of Counsel Form
Procedures

29044252763

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT: Kathleen Cannon**

MUR: 5849

5
6 **I. FACTUAL BACKGROUND**

7 **Bank of America Corporation (the "Bank") is a publicly held corporation headquartered**
8 **in Charlotte, North Carolina. Bank of America N.A. is a wholly owned subsidiary of the Bank.**
9 **The Bank's Los Angeles-based Student Banking Division employs about 160 individuals for the**
10 **purpose of providing education financing and other banking services to students. At all times**
11 **relevant to this matter, the division was managed by Senior Vice President, Kathleen Cannon.**
12 **Cannon served as the division's senior vice president for twelve of the twenty-nine years she**
13 **worked at the Bank, and in that capacity, directly supervised nine managers. It appears that**
14 **during the relevant time period, Cannon had significant autonomy in running the division, due in**
15 **part to frequent turnover among her direct supervisors.**

16 **Information obtained by the Commission in the course of carrying out its supervisory**
17 **responsibilities indicates that the Bank reimbursed a total of \$8,200 in political contributions**
18 **made by employees of the Student Banking Division. Cannon directly authorized the**
19 **reimbursement of \$7,100 for political contributions made by managers, who reported directly to**
20 **her. The following chart summarizes the details regarding each individual political contribution**
21 **for which Cannon authorized reimbursements.**

29044252764

1

Contributor	Amount Of Contribution	Recipient Committee	Amount of Reimburse- ment	Expense Report Date	Authorizing Manager
Baehr	\$500	McKeon	\$500	12/15/99	Cannon
Rubio	\$250	Johnson	\$250	12/6/01	Cannon
Reinstadtler	\$250	Johnson	\$250	12/14/01	Cannon
Mills	\$250	Johnson	\$250	12/19/01	Cannon
Reinstadtler	\$1,000	McKeon	\$1,000	5/6/02	Cannon
Mills	\$500	McKeon	\$500	10/11/02	Cannon
Baehr	\$500	McKeon	\$500	10/25/02	Cannon
Ainilian	\$400	McKeon	\$400	11/10/03	Cannon
Baehr	\$400	McKeon	\$500	11/10/03	Cannon
Mills	\$400	McKeon	\$400	11/10/03	Cannon
Rubio	\$400	McKeon	\$400	11/10/03	Cannon
Cline	\$400	McKeon	\$400	12/9/03	Cannon
Boykin	\$400	McKeon	\$400	12/10/03	Cannon
Mills	\$250	Pomeroy	\$250	12/11/03	Cannon
Rubio	\$150	McKeon	\$150	3/3/04	Cannon
Ainilian	\$150	McKeon	\$150	5/19/04	Cannon
Boykin	\$600	McKeon	\$600	7/8/04	Cannon
Cline	\$300	McKeon	\$300	7/13/04	Cannon
Total:	\$7,100		\$7,200 ¹		

2

3

4

5

6

7

8

9

10

Cannon has reportedly admitted that she solicited contributions from her subordinates ("direct reports"), instructed them to submit requests for reimbursement of the contribution, and subsequently approved those requests. Cannon apparently stated that she began this practice in 1999 after being informed by staff of Representative Howard P. "Buck" McKeon, that she could not use a corporate check to pay for a table at the annual fundraising dinner for McKeon's principal campaign committee, McKeon for Congress. As shown in the chart of contributions, the majority of Cannon's fundraising efforts were on behalf of McKeon, Chairman of the House Committee on Education and the Workforce, which is the authorizing committee for federal

¹ On November 10, 2003, Christian Baehr, Credit Manager of the Student Banking Division, was reimbursed \$500 for a \$400 contribution he made to McKeon for Congress.

29044252765

1 student lending legislation. Cannon apparently lives in Representative McKeon's district and
2 has known him since approximately 1993. She reportedly stated that she was not a McKeon
3 supporter and did not get any personal benefit out of soliciting contributions for his committee,
4 asserting that her sole motivation in soliciting political contributions was to assist the Bank.²

5 Cannon reportedly asserted that she understood the McKeon committee's admonition
6 against corporate checks to mean that while Bank checks could not be used, individual
7 employees could make personal contributions and then obtain reimbursement from the Bank as a
8 business development expense.³ Therefore, instead of using a Bank check to cover the cost of
9 the table at the McKeon fundraiser as she had planned, Cannon wrote a personal check in the
10 amount of \$1,000 to McKeon for Congress and requested that at least one of her direct reports
11 also make a personal contribution to McKeon. Christian Baehr, Credit Manager, apparently said
12 that Cannon instructed him to contribute \$500 to the McKeon campaign, which he subsequently
13 did, and told him that he could expense it. Baehr submitted a request for reimbursement of the
14 contribution, which Cannon authorized, and the Bank reimbursed Baehr.

15 The next instance of Cannon soliciting political contributions from Student Banking
16 personnel apparently did not occur until December 2001. At that time, Cannon reportedly asked
17 some of her direct reports to attend a fundraiser for Senator Tim Johnson. In response to

² Cannon had previously made two \$250 contributions to McKeon in 1998. Between 1998 and 2005, Cannon contributed a total of \$6,450 to McKeon for Congress. During that same period, she contributed an additional \$2,950 to other political committees. Cannon reportedly stated that she did not seek reimbursement from the Bank for any of these contributions because she was well paid and she did not want to deplete her limited "client development budget."

³ The Bank's PAC administrator reportedly stated that Cannon regularly solicited PAC contributions from all eligible employees in the division via conference call. Unlike the specific contributions solicited by Cannon which are at issue in this matter, it appears that Cannon never offered to authorize the reimbursement of any contributions she solicited for the Bank's PAC. Cannon reportedly stated that she never offered to reimburse employee contributions to the Bank's PAC because, unlike the McKeon events, such contributions were not "business development."

**1 Cannon's request, Alec Reinstadtler, Sales Manager; Robert Rubio, Accounts and Product
2 Support Manager; and Don Mills, Manager of Sales and Marketing, contributed \$250 each to
3 attend a breakfast fundraiser for the Senator. Each submitted a request for reimbursement. With
4 Cannon's approval, the Bank issued reimbursements to each manager.**

**5 It appears that in the spring of 2002, Cannon again asked one of her direct reports to
6 make a personal political contribution to McKeon. Cannon apparently called Reinstadtler and
7 told him that she needed him to travel to the District of Columbia in order to participate in a golf
8 event benefiting Representative McKeon. Reinstadtler stated that he wrote a personal check to
9 cover the \$1,000 fundraising event. As he had done with a previous contribution, he submitted a
10 request for reimbursement, Cannon approved the request, and the Bank issued the
11 reimbursement.**

**12 On October 18, 2002, Baehr and Mills, along with Kenneth Evans, West Regional Sales
13 Manager for Student Banking, each contributed \$500 to McKeon for Congress.⁴ Each submitted
14 a request for reimbursement. Cannon authorized Baehr's and Mills's requests for
15 reimbursement, which the Bank duly issued. It appears that Cannon instructed Evans to
16 categorize the contribution on his expense report as a "charitable contribution." Cannon
17 reportedly admitted that she usually told her direct reports how to expense the political
18 contribution checks.**

**19 In 2003, Cannon began soliciting contributions via e-mail. The first of these e-mails,
20 dated November 3, 2003, contained the subject line "McKeon dinner -- Important" and was sent**

⁴ Cannon also contributed \$500 to McKeon for Congress on the same date that these three contributions were made. It appears that the contributions were made to purchase tickets for a McKeon fundraiser. Baehr's expense report included a McKeon Committee receipt titled "Let Freedom Ring," and Evans's expense report included the invitation for the same event.

to eighteen Bank employees, including seven of Cannon's direct reports. Cannon reportedly stated that she "agreed, once again to purchase a table" for McKeon's annual dinner and needed eight people to join her. In response to an e-mail query from direct report Susan Ainilian, Manager of Service and Audit Support, about the cost of attending, Cannon simply stated, "you can expense it." In addition to Ainilian, five other direct reports each contributed \$400 to McKeon for Congress: Bachr, Mills, Rubio, Dee Cline, Strategic Initiatives Manager, and Gemma Boykin, Manager of Loan Origination, Loan Support, Voice of the Customer. Each submitted a request for reimbursement of their respective contribution and, with Cannon's authorization, the Bank reimbursed all six contributions.

Cannon also reportedly made a verbal solicitation for political contributions from two direct reports in December 2003. Reinstadtler and Mills stated that, during the course of the December 2003 Consumer Banking Association conference in Washington D.C., Cannon asked them to contribute to Earl Pomeroy for Congress. Each contributed \$250 to the committee, but only Mills requested and received, with Cannon's authorization, reimbursement for this contribution.⁵

On February 20, 2004, Cannon sent eight of her direct reports another solicitation for contributions via e-mail with the subject heading "McKeon Fundraiser." This e-mail states, in pertinent part, "I need two checks for a McKeon fundraiser (hopefully two people that did not write before). I will show you how to expense it so you will not be out of pocket." Rubio and Ainilian contributed \$150 to McKeon for Congress in response to the e-mail. Each requested

⁵ Reinstadtler stated that he did not submit a reimbursement request for this political contribution because a Bank colleague had recently told him that the practice was the equivalent of the Bank making the contribution and was, thus, improper.

1 reimbursement and the Bank reimbursed both contributions with Cannon's authorization.

2 On June 11, 2004, Cannon issued another e-mail solicitation inviting Anilian, Bachr,
3 Boykin, Cline, Evans, Mills, Rubio, and Bob Kolich, Portfolio Management Manager, as well as
4 eighteen other Student Banking Division employees to a July 9, 2004 fundraising dinner to
5 benefit Representative McKeon. After providing details regarding the event, the e-mail states in
6 pertinent part "[t]he tickets can not be expensed as it is a contribution." This statement appears
7 to directly contradict Cannon's assurance in the February 20, 2004 e-mail that she would show
8 those who contributed "how to expense it." Cannon reportedly explained that the June 11, 2004
9 e-mail referred to the prohibition on the Bank submitting a check directly, i.e. that the bank could
10 not write the original check. Cannon reportedly also stated that the Student Banking Division
11 frequently "expensed" tables purchased at charitable events.

12 It appears that Cline, Mills and Rubio each contributed \$300 to McKeon for Congress in
13 response to Cannon's solicitation of June 11, although only Cline requested and received
14 reimbursement. Neither Mills nor Rubio requested reimbursement for their contributions. Cline
15 stated that Cannon telephoned her to follow up on the June 11th e-mail solicitation. Cline asserts
16 that, during this conversation, Cannon pressured her to send in a contribution via intra-office
17 mail, adding that Cline could "expense it." Cline says that she stated, "but that's not what your
18 e-mail says." Cannon reportedly responded that she should "just write the check, you're going to
19 expense it." Cline subsequently contributed \$300 to McKeon for Congress and submitted a
20 request for reimbursement of the contribution, which the Bank reimbursed with Cannon's
21 approval.⁶

⁶ In her reimbursement request form, Cline wrote that she had lost the receipt for the expense, which she described as "Public/Community Relations."

1 Boykin, who did not read the June 11th e-mail solicitation, stated that she contributed
2 \$600 to the McKeon for Congress committee in response to a verbal solicitation by Cannon.⁷
3 Boykin submitted a request for reimbursement of her \$600 political contribution, which the Bank
4 reimbursed with Cannon's authorization.

5 On July 8, 2005, Cannon sent a fourth and final e-mail, this time to Rubio, Boykin,
6 Baehr, Cline, Mills and Dale Robertson, Senior Technology Manager, soliciting contributions for
7 a McKeon fundraiser being held on July 9, 2005. Cannon states in the e-mail, "I would ask each
8 of you to write a check for \$250 and then expense it as business development. I have a receipt
9 for each of you to use in your expenses. Thanks - I will not mail the check until you get
10 reimbursed."

11 Immediately after receiving Cannon's July 8th e-mail, Boykin reportedly confronted
12 Cannon regarding the legality of obtaining reimbursements for political contributions.
13 Apparently, Boykin had just completed the Bank's new on-line ethics training and, as a result,
14 learned for the first time that using Bank funds to reimburse contributions was "wrong."⁸
15 Boykin stated that she entered Cannon's office and gave Cannon her contribution check.
16 According to Boykin, Cannon asked whether she had been reimbursed, Boykin responded that
17 reimbursements were in violation of the rules set forth in the ethics training. Boykin said that
18 Cannon looked up at her and said, "Oh - I know." Boykin asked Cannon why she told her to

⁷ Boykin apparently said that she did not read the June 11th e-mail solicitation because her secretary deleted the e-mail while she was on vacation.

⁸ The Bank's ethics manual, dated June 1, 2005, stated that "[f]ederal statutes make it unlawful for a national bank to make any contribution through the use of funds, services, property or other resources in conjunction with any federal, state or local election. Additionally, corporations are also restricted from making contributions in federal elections and in many states." In 2005, the Bank's ethics training was significantly revised and improved by its new on-line format, which required that employees answer specific questions on its contents. The 2005 on-line training reportedly prompted the Student Banking employees to discuss Cannon's practice of soliciting political contributions and authorizing their reimbursement with Bank funds.

1 expense the contribution and Cannon did not respond. Cannon reportedly denied telling Boykin
2 she knew that obtaining reimbursements from the Bank was improper or illegal.⁹

3 Cannon received several checks in response to her July 8th e-mail, including Boykin's
4 and one from Dee Cline. However, these checks were never delivered to McKeon for Congress.
5 Even though Cline's check was never delivered to McKeon for Congress, she requested, and
6 received reimbursement for the contribution check, with Cannon's authorization.

7 **III. LEGAL ANALYSIS**

8 Under the Act, corporations and national banks are prohibited from making contributions
9 or expenditures from their general treasury funds in connection with any election of any
10 candidate for federal office. 2 U.S.C. § 441b(a). Corporate officers are prohibited from
11 consenting to contributions made by the corporation or national bank. *Id.* The Act also provides
12 that no person shall make a contribution in the name of another person. 2 U.S.C. § 441f. It is a
13 violation of the Act to knowingly help or assist any person in making a contribution in the name
14 of another. 11 C.F.R. § 110.4(b)(iii). Cannon, an officer of the Bank of America Corporation,
15 approved \$7,100 in corporate reimbursements described in this report and knowingly assisted in
16 making contributions in the name of another in violation of 2 U.S.C. §§ 441b(a) and 441f.

17 The available information provides sufficient basis for finding that Cannon's violations
18 were knowing and willful.¹⁰ First, in 1999, McKeon for Congress explicitly told Cannon that the

⁹ Boykin stated that she told several other Cannon direct reports, including Mills and Robertson, about this conversation soon after it occurred. Mills apparently recalled that Boykin reported Cannon saying something along the lines of - "we won't get caught."

¹⁰ The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramasi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Taking steps to disguise the source of funds used in illegal activities may reasonably be explained as a "motivation to evade lawful obligations" and will also be
Footnote continued on following page

29044252771

1 committees could not accept corporate checks. Cannon reportedly claimed that she did not
2 understand that the McKeon committee's admonition against corporate checks prevented
3 individual employees from making personal contributions and obtaining reimbursement from the
4 Bank as a business development expense.

5 Second, on July 11, 2004, Cannon sent an e-mail solicitation to several direct reports
6 soliciting contributions to the 2004 McKeon for Congress fundraiser, which included the
7 statement – “[t]he tickets can not be expensed as it is a contribution.” This statement appears to
8 indicate that by that time, she understood, at least on some level, that reimbursing contributions
9 with Bank funds was prohibited. Despite this apparent understanding, Cannon subsequently
10 approved requests for reimbursements of political contributions made by her direct reports.¹¹
11 This may demonstrate a willingness to ignore or contravene this understanding.

12 Third, it appears that Cannon recognized reimbursing contributions was improper, in part,
13 because her e-mails only explicitly stated that contributions could be reimbursed when the
14 recipient list was restricted to her direct reports. Specifically, e-mails issued exclusively to her
15 direct reports on November 3, 2003 (e-mail response to Aimilian), February 20, 2004 and July 8,
16 2005, *see supra* pp. 4-6, stated that contributions could be reimbursed, while e-mail solicitations
17 issued to a wider audience in Student Banking Division, dated November 3, 2003 and June 11,
18 2004, either did not mention the issue of reimbursements at all or stated definitively that the
19 contributions cannot be expensed, *see supra* pp. 4 – 6.

considered evidence of knowing and willing behavior. *Id.* at 213-4 (citing *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

¹¹ Cannon subsequently authorized the reimbursement of Cline's \$300 political contribution and Boykin's \$600 political contribution to the 2004 McKeon for Congress fundraiser. A year later, Cannon authorized the reimbursement of Cline's \$250 political contribution to the 2005 McKeon for Congress annual fundraiser.

29044252772

1 Finally, Boykin, one of Cannon's direct reports, told investigators that in a confrontation
2 with Cannon over the propriety of reimbursing political contributions, Cannon admitted the
3 practice was unlawful as set forth in the Bank's code of ethics.

4 Accordingly, the Commission finds reason to believe Kathleen Cannon knowingly and
5 willfully violated 2 U.S.C. §§ 441b(a) and 441f.

29044252773